# VeraSMART Software License & Software Maintenance Agreement

1. **SOFTWARE LICENSE***: VERAMARK hereby grants and Customer accepts, according to the terms and conditions defined herein, a nontransferable and nonexclusive license to operate the software described in Exhibit A (the "SOFTWARE") at the prices noted in Exhibit A. Customer agrees to use the SOFTWARE only for its own use in processing its own data at the Customer's location(s) noted in Exhibit A.

2. **INTELLECTUAL PROPERTY RIGHTS:** Customer acknowledges that, with the exception of the GNU ASpell program and the SCOWL 5 dictionaries which are incorporated in the SOFTWARE, the SOFTWARE including its programs, screens, database schema, concepts, and documentation has been designed by and remains the intellectual property of VERAMARK and is the confidential proprietary information of VERAMARK. The SOFTWARE and all permitted copies thereof are VERAMARK's exclusive property and may be used by Customer only in accordance with the terms of this Agreement. VERAMARK grants Customer no rights to the SOFTWARE other than specifically set forth herein, and VERAMARK retains on an exclusive basis all proprietary rights in and to the SOFTWARE and all intellectual property relating thereto. Customer may not disclose or make available to third parties the SOFTWARE or any portion thereof without VERAMARK's prior written consent. All work performed under or related to this Agreement is **not** a "work for hire" and Veramark shall own all intellectual property rights relating to the work performed under this Agreement including any efforts under the Support and Maintenance Agreement and modifications to the SOFTWARE or delivered materials. Customer shall not make, support or permit any claims adverse to Veramark's rights set forth herein.

   Customer will retain exclusive right to the content of all reports, the content of other work product, or content analysis to the extent that such content contains Customer information, including, but not limited to Customer confidential information and Customer data. Customer shall have an irrevocable and perpetual right to use and retain the SOFTWARE reports generated and saved by Customer.

3. **SOFTWARE BACKUP AND USERS MANUAL DUPLICATION:** Customer may make one (1) copy of the SOFTWARE for backup purposes only. That backup copy of the SOFTWARE shall contain all of VERAMARK's restrictive and proprietary notices as they appear on the SOFTWARE provided hereunder by VERAMARK. Electronic copies of the user's manual can be printed or reproduced for use with the SOFTWARE. The user's manual cannot be copied for distribution outside of this purpose.

4. **SOFTWARE SYSTEM IMPLEMENTATION, INSTALLATION AND TRAINING**: The parties agree to prepare a mutually acceptable schedule for the implementation and installation of the SOFTWARE and SOFTWARE training. VERAMARK shall provide Customer with implementation, installation and training services at the prices set forth in Exhibit A.

5. **WARRANTY**: VERAMARK warrants, for the first sixty (60) days after installation, that the installed SOFTWARE will substantially conform to the functional description set forth in the VeraSMART Product Description published by Veramark as of the Effective Date. During and after such warranty period, VERAMARK will provide maintenance and support for the SOFTWARE pursuant to Section 12 of this Agreement. Customer's sole remedy for breach of the sixty (60) day warranty is that VERAMARK, at no cost to Customer other than VERAMARK's expenses for travel and lodging for on-site service, shall either (1) use its reasonable commercial efforts to repair the SOFTWARE that is the subject of the breach so that it substantially conforms to the published functional description of the SOFTWARE or (2) replace the SOFTWARE to comply with such description.

   **THE WARRANTY SET FORTH IN THIS SECTION 5 IS THE ONLY WARRANTY MADE BY VERAMARK. VERAMARK EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. VERAMARK DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS THAT THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE AND/OR ITS USE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE, IF ANY, WILL BE CORRECTED. VERAMARK'S WARRANTY SET FORTH IN THIS SECTION 5 AND THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 8, BELOW, ARE IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF VERAMARK FOR DAMAGES (WHETHER ARISING IN CONTRACT, TORT, WARRANTY OR OTHERWISE) ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY OR USE OF THE SOFTWARE OR ANY RELATED SERVICES.**

   **CUSTOMER AGREES THAT VERAMARK HAS NOT MADE AND CUSTOMER IS NOT RELYING UPON ANY WARRANTY OR REPRESENTATION EXCEPT AS SPECIFICALLY SET FORTH HEREIN.**

6. **RESPONSIBILITIES OF CUSTOMER:** Customer shall be exclusively responsible for the operation, supervision, management and control of its copies of the SOFTWARE, including but not limited to:

   a. Providing the proper computer configuration, operating environment and operating methods.
   b. Establishing proper program and data backup procedures.
   c. Providing operating personnel who are trained and knowledgeable on all aspects of testing, evaluating, using and implementing the SOFTWARE and requesting maintenance for the SOFTWARE.
   d. Adequately protecting the SOFTWARE programs, rate modules and documentation against unlawful duplication or loss.
   e. Ensuring that its use of the SOFTWARE conforms to the site and server restrictions specified in Exhibit A.

   Nothing above shall be interpreted to grant any right to Customer not specifically set forth herein.

All obligations of VERAMARK are conditioned upon full and timely performance of all Customer obligations, including but not limited to payments of all amounts payable by Customer under this Agreement, reasonable access to Customer's facilities and Customer's cooperation in the implementation and installation of the SOFTWARE.

7. **CONFIDENTIALITY:** (a) In the course of this Agreement a party may provide to the other materials, documents or information that the disclosing party considers to be confidential or proprietary ("Confidential Information"). The parties endeavor to avoid providing Confidential Information except to the extent required in the performance of this Agreement. Each party agrees to not disclose Confidential Information of the other party, and to use such Confidential Information only as necessary for performance of this Agreement, or the installation, operation, use, support and maintenance of the SOFTWARE.

(b) If a party seeks protection of Confidential Information, it shall mark such information with an appropriate and conspicuous marking or legend. Despite such marking, information shall not be considered to be Proprietary Information to the extent it is in the public domain, is readily apparent or discernable, was previously in the possession of the receiving party or later becomes legally available from another source, was developed by the receiving party independently of and without reference to any of the disclosing party's Confidential Information, or, after disclosure, the disclosing party no longer seeks protection.

(c) Each party will protect the confidentiality of all Confidential Information received from the other party with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than a reasonable degree of care. The confidentiality obligations of each party under this Agreement will survive any expiration or termination of this Agreement for a period of 5 years. Upon termination of this Agreement, each party will cease all use of the other party's Confidential Information and will promptly return, or at the other party's request, destroy, all Confidential Information in tangible form and all copies of Confidential Information. Upon request, a party will certify in writing its compliance with this Section 7.

(d) All Confidential Information furnished to the receiving party by the disclosing party, with all copies made thereof, will remain the property of the disclosing party and will be returned to the disclosing party promptly at its request or at the termination of this Agreement.

8. **LIMITATIONS OF USE/INDEMNITY:** Customer agrees it will not sell, rent, lease, operate, provide access, copy, duplicate or give away all or any portion of the SOFTWARE to or for any other party or entity or use the SOFTWARE in accordance with the terms of this Agreement at any location other than as set forth herein. Customer agrees that it is specifically prohibited from modifying, translating, reverse engineering, de-compiling, or disassembling the SOFTWARE, or from creating derivative works based on the SOFTWARE, and waives any right it may have perform such activities. In the event that the Customer breaches this Section 6 all of the Customer's rights to use the SOFTWARE will immediately terminate and all copies of the SOFTWARE and its documentation will be immediately returned to VERAMARK and any further operation or use by Customer of the SOFTWARE is then terminated. Customer will, at its own expense, indemnify and hold VERAMARK and its officers and employees harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs and expenses arising out of a breach of this Section 8.

9. **RIGHT TO AUDIT:** Upon prior written notice thereof, Customer agrees that VERAMARK may audit Customer's use of the SOFTWARE at such times as Customer and VERAMARK reasonably agree. Notwithstanding the foregoing, VERAMARK may conduct an audit at least once a year.

10. **INFRINGEMENT:** In the event that the SOFTWARE infringes any U.S. copyright, patent, trademark or trade secret rights of a third party, VERAMARK shall defend Customer against any claims of such infringement and shall pay any monetary judgments, reasonable attorneys' fee, and costs awarded to the third party for such infringement, or any settlement of such claim to which VERAMARK has agreed, provided that (i) Customer promptly gives notice to VERAMARK of the claim against Customer alleging such infringement, (ii) Customer allows VERAMARK to control the defense and settlement of such claim, including any litigation, arbitration, mediation and settlement negotiations, (iii) Customer reasonably cooperates with VERAMARK in connection with the defense and settlement of such claim, and (iv) if requested by VERAMARK, Customer ceases all use of the infringing SOFTWARE and returns it to VERAMARK.

If Customer is enjoined from continued use of any infringing SOFTWARE or if Customer ceases use of any SOFTWARE at the request of VERAMARK under (iv) above, then VERAMARK shall, at its expense, use its best efforts to (a) obtain a license or right for Customer to continue use of the infringing SOFTWARE, (b) modify the infringing SOFTWARE to eliminate the infringement (while having the same or additional functionality and comparable or improved performance characteristics) and make such modified SOFTWARE available to Customer, or (c) make substitute non-infringing software available to Customer (such substitute software will for purposes of this Agreement replace and then constitute "SOFTWARE" under this Agreement). In lieu of the foregoing VERAMARK may, at its option, refund to Customer that portion of the license fees paid under this Agreement that can reasonably be allocated to the infringing SOFTWARE, reduced by 25% for each year that it has been used by Customer.

Notwithstanding the foregoing, VERAMARK shall have no obligation or liability to Customer for infringement if the infringement is based upon (1) any altered, changed or modified form of the SOFTWARE not made by VERAMARK, or (2) the use of the SOFTWARE other than as described by VERAMARK in the Documentation, other written instructions or in any VERAMARK authorized training, or (3) the use of the SOFTWARE outside the scope if the licensed use, or (4) any specifications or requirements of Customer.

This Section 10 states the entire and exclusive obligation of VERAMARK to Customer regarding any claim of infringement or other violation of any third party intellectual property rights.

11. **LIMITATION OF LIABILITIES:** VERAMARK will not be liable for any lost profits, special, incidental, consequential, indirect damages, or for any claim or demand against Customer by any other party, arising from the SOFTWARE, or accompanying documentation, however caused, on any

theory of liability (including contract, tort or warranty). This limitation applies even if VERAMARK has been advised of the possibility of such damage. Customer acknowledges the license fee reflects this allocation of risk. VERAMARK's liability to Customer for damages, regardless of the form of action, shall not exceed the SOFTWARE fees and other charges paid by Customer under this agreement pro-rated over a five year period beginning on the date the SOFTWARE was installed.

12. **SUPPORT AND MAINTENANCE:** Veramark will provide support and maintenance services for the software described in Exhibit A in accordance with the VeraSMART Software Maintenance Agreement. First year maintenance and support is included in the cost of the VeraSMART license. This initial maintenance period will begin on the date on which the installation of the software described in Exhibit A is completed. Customer may renew the maintenance and support services for additional periods of twelve (12) months in accordance with section 7 of the VeraSMART Software Maintenance Agreement.

13. **TERMINATION OF THE AGREEMENT:** Either party may terminate this Agreement upon written notice to the other party if the other party materially breaches any provision of this Agreement and fails to cure such breach within thirty (30) days following non-breaching party's written notice of the breach. Within 30 days of termination of this Agreement for Customer's breach, Customer shall return the licensed SOFTWARE and documentation to VERAMARK and certify that it has returned all copies of the SOFTWARE. Notwithstanding anything contained in this Agreement, VERAMARK shall have the right to immediately terminate this Agreement if Customer misuses the SOFTWARE in contravention of this Agreement.

14. **PUBLICITY:** Customer hereby grants VERAMARK the right to use Customer's name in any sales literature, press release, or other documents or communications that list Customer as a customer of VERAMARK.

15. **GENERAL:** This Agreement sets forth the entire agreement between the parties and supersedes all proposals and other communication between parties, oral or written, with respect to the subject matter hereof. This Agreement shall be governed by the laws of New York, without giving effect to conflict of law rules. The parties agree that any dispute arising out of this Agreement shall be determined by a court of competent jurisdiction located in Monroe County New York and the parties irrevocably consent to the exclusive jurisdiction of such court. This Agreement serves as the sole source for all terms and conditions regarding the SOFTWARE and the subject matter of this Agreement. This Agreement may be modified or amended only by a writing signed by both parties. If the terms of this Agreement conflict with the terms of a purchase order, the terms of this Agreement shall control. Customer may not assign or sublicense its rights and obligations under this Agreement without the prior written consent of VERAMARK, any attempted assignment is void. However, Customer may assign this Agreement, and all of its rights and duties hereunder, to any third party that purchases all or substantially all of Customer's assets, or to any third party that Customer legally merges into or consolidates with, so long as (i) prior to such assignment (a) VERAMARK is notified thereof in writing, and (b) Customer and such third-party execute a written agreement to VERAMARK's benefit evidencing such assignment and its terms that is delivered to VERAMARK, and (ii) Customer remains liable to VERAMARK for any breach of this Agreement. If any portion of this Agreement is held invalid under any applicable statute or rule of law, then only such portion shall be deemed invalid, and the remainder of this Agreement will not be invalidated or affected thereby.

**EXHIBIT A**
**LICENSED SOFTWARE AND SOFTWARE RELATED SERVICES**
**DESCRIPTION AND PRICING**

This VeraSMART Software License & Software Maintenance Agreement and this Exhibit A pertain to all Veramark software as reflected on the pertinent Master Agreement Rider or Sales Quote.  The price to be paid for the license of the software is the price as stated on the pertinent Master Agreement or Sales Quote.

This product makes use of unmodified versions of the GNU ASpell program and the SCOWL 5 dictionaries.

ASpell V .5:

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This VeraSMART Software Maintenance Agreement ("Maintenance Agreement") sets forth all of the situations upon which VERAMARK TECHNOLOGIES, INC. ("VERAMARK") will provide maintenance services for the SOFTWARE licensed to Customer under the Software License Agreement to which this Maintenance Agreement is attached.

**1.  VERAMARK agrees to provide Customer with the following:**

1.1  Telephone Support:

Telephone access to SOFTWARE support personnel will be available 8:00 a.m. to 8:00 p.m. Eastern Time, Monday through Friday, exclusive of VERAMARK designated holidays, to answer questions and provide guidance about SOFTWARE uses, operations, and application.  Customer may place telephone support calls only to the following telephone number (585) 249-3310.

Priority 1 Emergency Service (system down or loss of call data) outside normal business hours is covered by this agreement. All other service calls (Priority 2 and 3) outside normal business hours will be billed at the prevailing premium rate.

1.2  Maintenance Upgrades & Major Releases:

Maintenance Upgrades of the SOFTWARE will be made available when prepared by VERAMARK.  A Maintenance Upgrade is an upgrade to the SOFTWARE to fix a Defect (defined in section 2.2) and which is provided to licensed users of SOFTWARE receiving maintenance services from VERAMARK.  Veramark also will provide Customer with Major Releases.  "Major Release" means any modifications, additions and substitutions to the software that result in substantial performance, or structural/functional improvements in the software, which are designated as Major Releases by Veramark in its sole discretion.  Major Releases may be identified by a change in the numerals on the left side of the decimal point of the Products version number. If the fix for a Defect is only made available in a new version of the SOFTWARE, VERAMARK will provide Customer that portion of the new version that comprises the fix only.

VERAMARK requires the Customer to be on the current or on the second most current version of the SOFTWARE before they will provide maintenance services, or investigate, or repair any Customer reported Defects.

VERAMARK will use commercially reasonable efforts to respond to Maintenance Requests that are identified by Customer, and to develop   and implement fixes for Defects and/or work-arounds thereto if it is agreed by VERAMARK that the reported error is being caused by a Defect.

1.3  Monthly Updates to Area and Prefix Codes:

Monthly updates to area and prefix codes will be made available via electronic download from VERAMARK's website.

1.4  Web Access:

Maintenance includes access to the Veramark Technical Support Website, ([www.veramark.com](www.veramark.com)).  The site includes Product User Guides, Video Training Center, Support Procedures, Software Downloads as well as Technical Documents.  Maintenance Customers will have access to the website using their System ID.

1.5  Annual Maintenance Visit:

Maintenance includes a site visit on a mutually agreed upon date during the paid maintenance year.  The purpose of the visit will be to update the VeraSMART software to the latest Maintenance Upgrade, training on new features as well as a license and system performance review.

**2.  CUSTOMER agrees to the following:**

2.1  Customer Contacts:

Customer personnel contacting VERAMARK must be trained and knowledgeable on all aspects of using and implementing the   SOFTWARE.

2.2  Maintenance Requests:

A "Maintenance Request" is a request by Customer to fix an error in SOFTWARE resulting from a "Defect."  A Maintenance Request does not include any request for the services identified in Section 3 below as not being covered under these Terms and Conditions. A "Defect" is a malfunction in SOFTWARE due to SOFTWARE failing to perform according to its written specifications. A "Defect" does not include any other error or malfunction or performance characteristic of SOFTWARE; including an error or malfunction due to (i) the computer hardware upon which SOFTWARE is operating; or (ii) actions taken by Customer outside the standard use of SOFTWARE as described in its documentation such as modifications to SOFTWARE not performed by VERAMARK or its authorized agent; deleting system files, modifying configuration files or rating files without VERAMARK's advance written approval; or renaming VERAMARK files or directories or modifying VERAMARK tables through SQL or other methods without VERAMARK's advance written approval.  Additionally, VERAMARK does not provide software support services or defect fixes for 3$^{rd}$ Party Products purchased by Customer through VERAMARK.

Support requests will be prioritized as Priority 1, Priority 2 or Priority 3 as defined in the attached Customer Support Priority And Response Guidelines.

2.3 Remote Access Support:

Customer acknowledges that the services and maintenance provided under this Maintenance Agreement are subject to the Veramark Remote Access Support Policy, attached hereto. If Customer elects to engage VERAMARK's support and maintenance services under the "Non-Standard Remote Access" or "No Remote Access" options then (a) additional hourly support charges may apply, depending on the nature of the support and maintenance requested.; and (b) the timelines provided under the Support Priority, Response & Resolution Guidelines would not apply.

2.4 Third Party Hardware and Software:

Customer shall be responsible for the procurement, installation and maintenance of all required hardware and/or communications equipment not purchased from VERAMARK. Computers and/or other hardware peripherals supplied by VERAMARK will be covered by the manufacturer warranties and maintenance policies. No VERAMARK warranty will be provided on these items. Customer shall be responsible to install and maintain product and security updates for all third party software.

3. **SERVICE NOT COVERED UNDER THESE TERMS AND CONDITIONS:**

- Database conversion consulting or support.
- Project management, training, consulting, or software implementation services.
- Any over-the-phone training support.
- Support or defect fixes for third party products.
- Operating System, Network administration, support, configuration, or set-up.
- Database administration, support, configuration or set-up unless the database licensing was purchased by Customer from VERAMARK.
- Transfer of software or databases to different locations or servers after initial installation is complete.
- Test system support, configuration, set-up, and upgrades to new versions of the SOFTWARE.
- Detailed step by step installation assistance.
- On-site services including time and material costs and travel, food and lodging expenses.
- Any request by Customer for changes to SOFTWARE other than to fix a Defect. These would include custom modifications to SOFTWARE.
- Customization of the SOFTWARE based on unique Customer defined specifications.

VERAMARK may perform any of the above listed services for Customer, at Customer's request, on a time and material basis at VERAMARK's then-prevailing rates. Should VERAMARK perform services under these Terms and Conditions in response to a Maintenance Request and it is discovered that the problem was not the result of a Defect in VERAMARK's SOFTWARE; Customer will pay VERAMARK's time and material charges for such services at VERAMARK's then prevailing rates.

4. **PAYMENTS, INVOICING, TAXES:**

4.1 Fees for maintenance services shall be due and payable prior to the start of the Term and each Renewal Term. VERAMARK shall have no obligation to perform any services under these Terms and Conditions until such fees have been received by VERAMARK. VERAMARK may increase maintenance fees upon renewal.

4.2 In addition to the annual maintenance fee, Customer shall pay all sales and other taxes, however designated, which are levied or imposed by reason of the transactions contemplated herein.

4.3 In addition to the amounts set forth above, Customer shall pay VERAMARK on a time and material basis at VERAMARK's then-prevailing rates, including travel, food and lodging expenses for on-site service.

4.4 In the event of a lapse in annual maintenance coverage, Customer will be required to purchase a new one-year maintenance agreement before any support will be provided. In addition, Customer may be assessed a fee equal to the cost of upgrading Customer's SOFTWARE system to meet the current VeraSMART specifications.

5. **REPRESENTATIONS, WARRANTIES AND LIMITATION OF LIABILITY:**

5.1 VERAMARK shall use commercially reasonable efforts to provide the services it is obligated to provide under this Maintenance Agreement

5.2 VERAMARK MAKES NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THESE TERMS AND CONDITIONS, AND/OR THE SERVICES TO BE PROVIDED BY VERAMARK HEREUNDER, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5.3 VERAMARK'S only obligation under these Terms and Conditions to perform the services set forth in these Terms and Conditions until the Defect that is the subject of the Maintenance Request is fixed. In the event that those services cannot be provided within a reasonable time after notification of a Maintenance Request, CUSTOMER or VERAMARK may terminate these Terms and Conditions and Customer's sole and exclusive remedy against VERAMARK (whether in contract, tort or warranty) is a refund of an amount equal to the total annual maintenance fees paid by Customer for the Term or Renewal Term in which the subject Maintenance Request was given to VERAMARK by Customer divided by three-hundred sixty-five, multiplied by the number of days beginning on the date the Maintenance Request was received by VERAMARK through the last day of that Term or Renewal Term.

5.4 CUSTOMER ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES SHALL VERAMARK BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL, CONSEQUENTIAL DAMAGES OR SIMILAR DAMAGES, INCLUDING ANY LOST PROFITS OR LOST DATA ARISING OUT OF THE PERFORMANCE OF SERVICES BY VERAMARK HEREUNDER, ANY

WORK PRODUCT USED BY CUSTOMER, OR THE USE OR INABILITY TO USE THE SOFTWARE, EVEN IF VERAMARK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. **WORK PRODUCT OWNERSHIP:**

Any Defect fixes, changes, modifications, additions or enhancements to SOFTWARE or related documentation and any intellectual property developed or conceived in the performance of services under these Terms and Conditions ("WORK PRODUCT") shall be and remain the exclusive property of VERAMARK, regardless of whether Customer or its employees or agents may have contributed to the conception, joined in its development, or paid VERAMARK for such WORK PRODUCT and Customer acknowledges that it will execute and/or have its employees or agents execute any documents requested by VERAMARK to vest ownership of WORK PRODUCT in VERAMARK. Customer may use WORK PRODUCT only subject to the Terms and Conditions of Customer's license agreement with VERAMARK for the SOFTWARE.

7. **TERM AND TERMINATION:**

7.1 This Maintenance Agreement shall begin on the date on which the installation of the software described in Exhibit A is completed and shall continue for an initial term of twelve (12) months (the "Term"). Maintenance services may be renewed for additional terms of twelve months (each a "Renewal Term") upon Customer's execution of VERAMARK's renewal invoice and payment of appropriate fees. Failure to timely renew maintenance services or make payment for such services may result in a termination of maintenance services by VERAMARK. For any maintenance services requested by Customer at any time when this Maintenance Agreement has not been properly renewed, Customer will pay VERAMARK's then prevailing rates for any such services provided to Customer.

7.2 This Maintenance Agreement shall terminate as set forth in Section 5 above and also in the following manner:

Either party may terminate this Maintenance Agreement, for any reason and for no reason, by giving written notice to the other party at least forty-five (45) days prior to the next occurring Renewal Term. Such termination shall be effective on the last day of the Term or Renewal Term in which notice is given.

VERAMARK may terminate this Maintenance Agreement and any services being or to be performed hereunder, immediately upon Customer's default under this Maintenance Agreement, the Software License, or Customer's failure to timely pay any amount due to VERAMARK.

8. **ENTIRE TERMS AND CONDITIONS/ AMENDMENT/ASSIGNMENT:**

This sets forth the entire agreement relating to VERAMARK's provision of maintenance services for the Software. This may not be modified, explained or supplemented by a course of dealings by any usage or trade or custom, or by any prior performance between the parties pursuant hereto or otherwise. These Terms and Conditions may be amended only by a written instrument signed by the party to be charged. Customer may not assign or sublicense its rights and obligations under this Maintenance Agreement without the prior written consent of VERAMARK, any attempted assignment is void. However, Customer may assign this Maintenance Agreement and all of its rights and duties hereunder, to any third party that is properly assigned Customer's rights in the Software as set forth in the license agreement between Customer and VERAMARK for such Software.

9. **FORCE MAJEURE:**

VERAMARK shall not be responsible for failure to fulfill its obligations hereunder due to causes beyond its control, including, without limitation, acts of God, states of war, insurrection and acts of governments, fire, flood, natural disaster, malfunction of infrastructure or equipment, or shortages or any other similar cause other cause beyond the control VERAMARK.

10. **NOTICES:**

Notices hereunder shall be in writing and shall be deemed received when sent by registered or certified mail, return receipt requested, postage prepaid, and properly addressed the respective parties at the addresses shown in the VeraSMART SOFTWARE License & SOFTWARE Maintenance Agreement, or at such addresses as the parties may later specify in writing, according to this Section 10.

11. **GOVERNING LAW/VENUE:**

This Maintenance Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles of conflicts of laws. The parties agree that all actions or proceedings arising in connection with this Maintenance Agreement and/or any services performed under this Maintenance Agreement shall be tried and litigated only in the state and federal courts located in the County of Monroe, New York. Each party hereby irrevocably submits to the exclusive jurisdiction of such courts.

**VERAMARK SUPPORT PRIORITY, RESPONSE & RESOLUTION GUIDELINES**

**RESPONSE:** For support requests that are communicated directly to a Veramark Technical Support Specialist via telephone during business hours, Veramark will use commercially reasonable efforts to solve the problem in accordance with the Resolution Goals set forth below. For all other support requests made during business hours (e.g., voice-mail message, email, or fax), a Veramark Technical Support Specialist will respond to your request within two (2) business hours to acknowledge receipt of your request and to get additional information if needed (a "Response Call"). For support requests for which a Veramark Response Call is required, the times set forth below will be measured from Veramark's Response Call. The Response Call also applies to support requests made by pager after hours and weekends. (Please note that after hours and weekend support for Priority 2 and 3 issues is billable at the prevailing billable rate.)

| Priority Level | Examples of Priorities | Resolution Goal |
|---|---|---|
| 1.     PRIORITY 1<br><br>• A major component or function of the software is, or becomes, inoperable.<br>• The system halts, loses significant amounts of data, or can no longer properly operate. | • System down<br>• Unable to collect/poll data from the PSU or MSS-100, causing a loss of data.<br>• Unable to access major system components. | To correct the problem or provide an action plan to correct the problem within eight (8) business hours. |
| 2.     PRIORITY 2<br><br>• A significant (but not primary) component of the system is unusable or does not function, but does not result in data loss. | • Inability to poll remote sites.<br>• Inability to run or distribute reports.<br>• Configuration concerns of a time sensitive nature. | To correct the problem or provide an action plan to correct the problem within two (2) business days. |
| 3.     PRIORITY 3<br><br>• A problem exists which does not affect basic system functions. | • Administrative and general reporting questions.<br>• Rating/Costing issues.<br>• ASA switch import issues.<br>• Enhanced explanation of information already contained in the Help and User's Guide. | To correct the problem or provide an action plan to correct the problem within five (5) business days. |

Note:
- **The above timelines do not apply where PC remote access is not available or restricted.** Restricted remote access environments will result in increased time-frames for trouble shooting.
- **The above does not apply to instances where the software has been misused.** Examples of misuse include (but are not limited to): changes to required user rights/permissions, either locally or on the network; removal of, or restriction of access to, system directories or files; and Customer changes to user passwords without Veramark's consent and participation. An additional billable charge for trouble shooting in the event of software misuse may apply.

In the event that a customer needs involvement of a third party vendor/contractor/technician to assist in troubleshooting, Veramark Technical Support requires that the customer make arrangements with their assigned Veramark Technician to pre-plan or schedule a date and time where all involved parties can participate.

**CUSTOMER SUPPORT ESCALATION PROCEDURES**

If you do not receive a Response Call or resolution to your problem within the intervals stated above, you may escalate your problem to the Manager of Technical Support.
Phone: 585 381-6000 x6570
Email: Manager_Technical_Support@veramark.com
If your escalation to the Manager is not responded to within 2 hours, you may contact the Vice President of Operations.
Vice President of Operations
Phone: 585 381-6000 x6823
Email: VP_Operations@veramark.com

**VERAMARK REMOTE ACCESS SUPPORT POLICY**

Veramark's Remote Access Support includes three options:  Standard, Non-Standard and No Remote Access.

### Standard Remote Access

Standard remote access for Veramark Technical Support includes the following options:

- GoToMyPC® Client Session (HIPAA and GLB Compliant)
- pcAnywhere™/modem session (Requires client to own pcAnywhere)
- pcAnywhere direct IP session (Requires client to own pcAnywhere)

Standard Remote Access does not include any additional charges for implementation and maintenance.

### Non-Standard Remote Access

Remote access methods not listed above may be accommodated, but they will need to be charged for on a case-by-case basis after an evaluation is done. Non-standard remote access methods require additional Support time. The initial set up of the remote access session may require additional software to be loaded, new sets of passwords to record and keep track of for each customer, and assistance from MIS to open firewall ports and create rules to allow the remote access session to go through the firewall.
In light of these facts, the following charges will be applied to setup and maintain remote access methods other than the access options listed above.

- Initial set-up charges will be provided on request
- Yearly annual maintenance charges will be provided on request.  Remote Access maintenance charges will be pro-rated to correspond to the dates of the system maintenance contract.

The customer will provide software to Veramark at no cost for any changes to the remote access software that are required for Non-Standard Remote Access.

### No Remote Access

In the event a customer does not allow remote access, every reasonable effort will be made by Veramark Technical Support to resolve the incident without it. However, Veramark may not be able provide the same level of support when the customer does not allow remote access:

1 – The time to resolve an incident may be increased. In some cases, the incident may not be possible to resolve without an on-site visit by a Veramark technician.

2 - If the incident affects the collection of data, there may be loss of data until the incident is resolved.

3 – If Helpline Support arrives at a decision that they can go no further without accessing the system server, and the customer insists on trying to resolve the incident over the phone, the time will be billable at Veramark's prevailing rates.

4 – If the incident cannot be resolved over the phone and an on-site visit by Veramark results, the on-site visit is billable at prevailing rates plus travel and expenses.